SERVED: July 16, 1998

NTSB Order No. EA-4680

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of July, 1998

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. CRAIG FROST, Respondent.	)	Docket SE-14781

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on July 9, 1997, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator, on finding that respondent had

[1] The initial decision, an excerpt from the hearing transcript, is attached.

violated 14 C.F.R. 91.7(a) and 91.13(a).[2] The law judge, however, reduced the Administrator's 90-day proposed suspension to 50 days, on accepting the Administrator's withdrawal of a charge, and the law judge's finding that two other charges were not proven. We grant the appeal and dismiss the complaint.

Respondent was the pilot-in-command of a February 4, 1996 helicopter flight from Las Vegas, NV to Boise, ID, at which location he left the aircraft for maintenance. On March 4, 1996, FAA airworthiness inspector Ricardo Domingo inspected the aircraft, and testified to finding many unairworthy items, as listed in the complaint. The discussion that follows addresses each allegation (count) of the complaint that was affirmed by the law judge.

1. *The aircraft is not airworthy if its flight manual does not contain a permanent revision control page*. When Mr. Domingo did his inspection, he failed to locate a permanent revision control page in the flight manual. The manual itself, current and complete, is required to be in the aircraft by the type certificate.[3] The law judge reasoned that, without the revision

[2] Section 91.7(a) prohibits operation of unairworthy aircraft. Section 91.13(a) prohibits careless or reckless operations. If the first charge is proven, the second is automatic, being a residual charge to an operational violation. See Administrator v. Pritchett, NTSB Order EA-3271 (1991) at fn. 17, and cases cited there.

[3] Accordingly, the aircraft must contain a current manual for the aircraft to be airworthy. See Administrator v. Copsey, NTSB Order EA-3448 (1991) at 5 (test for airworthiness not only "flyability." The aircraft must be in conformance with its type

page, it would be impossible to know if the manual was complete. We disagree. The existence or nonexistence of the revision page says nothing about whether the manual is complete. The revision page could be there, and the manual still be incomplete. Likewise, there are other ways to determine if the manual is complete.

Overall, the Administrator did not establish that the revision page was actually a required part of the manual, or was simply a handy tool or reference item, not formally a part of the manual. Nor did he establish that the manual itself was in some substantive manner incomplete or out of date, so as to violate the type certificate and make the aircraft unairworthy. Accordingly, we dismiss this portion of the complaint.

2. *The aircraft is not airworthy if the turbine outlet temperature gauge does not have a red line at 793 degrees C*. The Administrator claimed, and the law judge found, that this gauge did not have the red line required by the flight manual showing the temperature limit. Our view of the gauge itself, which was introduced as evidence, leaves no doubt in our minds that respondent's position is accurate: there is a large line where a large red line should be, but its color has faded, just as the red "off" label on the gauge had faded. The tone, however, is red, not yellow. We have held that not every minor defect

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certificate and in condition for safe flight, citing Administrator v. Doppes, 5 NTSB 50, 52 (1985)).

requires a conclusion that the aircraft does not conform to its type certificate and therefore is unairworthy. See Administrator v. Calavaero, 5 NTSB 1099 and 1105 (1986). The faded line in this case is akin to the types of damage we considered in that case. As we said there,

> In this case the Administrator essentially made no effort to show that the alleged defects or discrepancies had had an adverse impact on the level of safety that an aircraft's conformity with its type certificate is intended to insure….

Id. at 1101. Normal wear and tear such as this, if not adversely affecting safety, is not considered an airworthiness violation.

3. *The aircraft was not airworthy because the dual tachometer did not have a yellow caution range from 50-60% NR, as required by the flight manual*. The Administrator's FAA witness testified that there was no colored yellow caution arc marked on the gauge between 50 and 60 when he looked at the aircraft in March. Respondent replied with a written statement from the current owner of the aircraft to the effect that the yellow arc is on the gauge, and the gauge had not been replaced since his purchase. The law judge, crediting the FAA testimony with greater weight, affirmed this violation.

The standard for airworthiness violations for pilots is not, however, one of strict liability. Thus, even accepting that the gauge lacked a required arc, we have held that pilots are subject to a reasonableness standard: did respondent know or should he have known that this colored arc was required. Administrator v. Parker, 3 NTSB 2997, 2998 (1980). The Administrator proved

neither in this case. All the Administrator proved was that the arc was missing. Respondent did not testify about whether he knew or did not know if a yellow arc was required on the gauge. To establish what a respondent could be expected to know (as opposed to what he actually did know), we have reviewed his experience. See, e.g., Administrator v. Doppes, 5 NTSB 50 (1985) at 53 ("Respondent's extensive background and credentials, including certification on the DC-3, DC-4, DC-8, Lockheed Constellation, Boeing 707, 727, 747, and others, and his 12,000 hours of pilot flight time, together with his maintenance experience, all indicate to us that respondent was aware, or should have been, that the aircraft was not airworthy"). There is no evidence in this case on this point.[4] Thus, this charge must be dismissed.

4. The aircraft was not airworthy because placards *describing an added fuel extender were not installed on the instrument panel and the baggage compartment.* Our conclusion here is similar to that regarding the tachometer. The Administrator did not establish that respondent knew or should have known that these placards were required, only that they were missing. We hesitate to impute to all pilots, regardless of background, the responsibility of knowing details such as these,

[4] Further, we would question the reasonableness of requiring all pilots to know the marking requirements of all cockpit equipment, as the Administrator's position would appear to require, especially when there is no concurrent allegation or implication of unsafe operation. See Calavaero, infra.

especially when it has not been established that there actually was a weight and balance problem with the aircraft, as the Administrator has alleged. Compare Administrator v. D'Attilio, NTSB Order EA-3237 (1990) (pilot who is also a mechanic should be held to a higher degree of care when airworthiness is an issue). In this regard, we would note that a premise of the Administrator's case is that the lack of placards requires a finding of a weight and balance violation. This logic escapes us. While the placards may well be required, there is no proof that the lack of them created any safety problem. Indeed, the Administrator admitted there was *no* evidence that the weight and balance documentation *had not been* updated to reflect changes/additions to the aircraft equipment, including the fuel extender. Tr. at 168. Respondent's exhibits indicated, in fact, that maintenance personnel, when effecting the equipment changes, had modified the weight and balance.[5]

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's complaint is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

[5] In light of our conclusions, there is no need to address respondent's allegations that the condition of the aircraft on February 4, 1996, may not be determined from the inspection 1 month later.